IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THOMAS E. SMITH, Plaintiff/Appellee, v. EDWARD L. HUBER and PAMELA HUBER, husband and wife, Defendants/Appellants.	2 CA-CV 2007-0017 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CV20050098

Honorable Robert Duber II, Judge

AFFIRMED IN PART; VACATED IN PART

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E C K E R S T R O M, Presiding Judge.

¶1 Defendants/appellants Edward and Pamela Huber appeal from the trial court's grant of summary judgment in favor of plaintiff/appellee Thomas Smith, quieting title in Smith's parcel of real property, including a 2.65-feet-wide strip bordering Smith's and the Hubers' properties that Smith acquired by adverse possession. The Hubers do not contend summary judgment was erroneously granted but, rather, contend the final judgment is deficient for lack of a plain-language description of the property and for failing to reflect the trial court's prior granting of partial summary judgment in their favor, quieting title to their house and land. The Hubers also argue Smith should not have been awarded attorney fees and costs because he did not comply with the statute that provides the exclusive avenue for awarding fees and costs in a quiet title action. For the following reasons, we affirm the judgment and the award of attorney fees but vacate the award of costs.

¶2 We view the facts in the light most favorable to the Hubers, the party against whom summary judgment was granted. *See Airfreight Express, Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, ¶ 2, 158 P.3d 232, 235 (App. 2007). The Hubers and Smith own adjacent parcels of residential property in Gila County. The Hubers purchased their property in 2000. Smith's mother and father had purchased their property in 1960, and Smith had inherited it after his mother died in 1995. Since at least 1960, Smith's property has been completely enclosed by a wall. The legal description of the property when it was sold to Smith's parents did not include a portion of the property enclosed within the wall, a narrow strip of land 2.65 feet wide and 65 feet long.

¶3 The Hubers conceded they believed the wall was the boundary between the two parcels when they purchased their property in 2000. Nonetheless, they have claimed at various times to own substantial land on Smith's side of the wall, including Smith's driveway and garage. The Hubers based their contention on the description contained in their deed but conceded they are not surveyors, have not had the property surveyed, and do not know how to interpret legal descriptions.

¶4 In April 2005, Smith filed an action to quiet title to his property against the Hubers but incorrectly included the legal description of the Hubers' property as the property at issue. In response, the Hubers filed an answer and counterclaim and then moved for partial summary judgment "only as to the [Hubers'] house and to parts of the land, not as to . . . [Smith's] garage nor to the driveway."[1] The trial court granted the Hubers' motion by unsigned minute entry.

¶5 Smith moved to amend his complaint to substitute the legal description in his deed for the wrongly included description of the Hubers' property. He then moved for summary judgment, asking the court to quiet title to the property described in his amended complaint. In the legal memorandum supporting his motion, he also claimed he adversely possessed the narrow strip of land located within his wall but not included in his deed. The

[1]As best as we can tell from the diagram of the two properties the Hubers presented to the trial court with their motion and from Smith's description of the property lines in his motion for summary judgment, the Hubers did include the 2.65-feet-wide strip within Smith's wall in their motion for partial summary judgment to quiet title to their house and land.

Hubers responded, requesting more time to have the property surveyed and denying that Smith had adversely possessed the property within the wall. However, after the hearing on the motion, the Hubers consented to the entry of summary judgment in Smith's favor.

¶6 Smith lodged a form of judgment to which the Hubers objected, arguing that the judgment "does not accurately reflect the results of the litigation," because the trial court had granted summary judgment on their counterclaim for quiet title to their house and land, which the proposed judgment did not reflect. The Hubers also asked the court to include a plain-language description of the property lines. Smith responded by proposing a judgment that contained a plain-language description, but the court declined to sign it. Instead, it signed the first form of judgment without granting relief to the Hubers in accordance with their objections. They now appeal from that judgment.

¶7 The Hubers argue the trial court erred when it granted partial summary judgment in their favor but then refused to sign a written judgment to that effect. As part of that argument, the Hubers rely on Rule 54(b), Ariz. R. Civ. P., 16 A.R.S., Pt. 2, contending the judgment was not a final, appealable order and the court failed to make the determinations required by the rule. Assuming that to be true, the appropriate relief would be a dismissal of this appeal for lack of appellate jurisdiction. *See Ariz. Bank v. Superior Court*, 17 Ariz. App. 115, 119, 495 P.2d 1322, 1326 (1972); *see also S. Cal. Edison Co. v. Peabody W. Coal Co.*, 194 Ariz. 47, n.5, 977 P.2d 769, 775 n.5 (1999) ("The refusal to enter Rule 54(b) language may not be reviewed on direct appeal."). We also note the

Hubers never submitted a proposed form of judgment but only objected to the one proposed by Smith. Nor did they ever ask the trial court to make the determinations required by Rule 54(b) to permit an appeal from a judgment that does not dispose of all claims. *See Acheson v. Shafter*, 107 Ariz. 576, 579, 490 P.2d 832, 835 (1971) (party cannot inject error into the proceedings and complain of it on appeal).

¶8 In any event, we conclude competing claims to quiet title to the same piece of property are not "multiple claims" under Rule 54(b). To be multiple claims, the claims must be both factually and legally distinct. *Continental Cas. v. Superior Court*, 130 Ariz. 189, 191, 635 P.2d 174, 176 (1981); *Stevens v. Mehagian's Home Furnishings, Inc.*, 90 Ariz. 42, 44, 365 P.2d 208, 209 (1961); *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304-05, 812 P.2d 1119, 1122-23 (App. 1991). "'The determination rests on whether the different claims could be separately enforced.'" *Salerno v. Atlantic Mut. Ins. Co.*, 198 Ariz. 54, ¶ 9, 6 P.3d 758, 761 (App. 2000), *quoting Sisemore v. Farmers Ins. Co. of Ariz.*, 161 Ariz. 564, 566, 779 P.2d 1303, 1305 (App. 1989). And the determination whether multiple claims exist is within the discretion of the trial court. *Continental Cas.*, 130 Ariz. at 191, 635 P.2d at 176. Because competing claims to title to the same piece of property involve the same set of facts and the same legal claim—"ownership of the disputed land"—the Hubers' and Smith's claims were a single claim, not multiple claims for purposes of Rule 54(b). *Weiser v. Union Pac. R.R. Co.*, 932 P.2d 596, 597 (Utah 1997) (quiet title action involving claim and counterclaim to same property a single claim for relief). Accordingly,

because the Hubers' and Smith's claims were not multiple claims, Rule 54(b) language was not necessary to render the judgment final and appealable, and we have jurisdiction over the appeal. *See* A.R.S. § 12-2101(B) (final judgments appealable).

¶9 Relying on Smith's having attached to his complaint for quiet title the legal description in the Hubers' deed, the Hubers claim Smith initially attempted to quiet title to their house and land. But Smith thereafter amended his complaint, acknowledging he had attached the wrong description to his first complaint and attaching the correct legal description of his property to his amended complaint. The only portion of the Hubers' property addressed in Smith's amended complaint was the 2.65-feet-wide strip enclosed within Smith's wall but not included in the legal description in his deed. Therefore, title to the Hubers' house and the rest of their land was not at issue, and the trial court's grant of summary judgment did not affect their undisputed title to that portion of the property described in their deed.

¶10 Moreover, the trial court's preliminary grant of partial summary judgment to the Hubers, quieting title to their house and all of the land described in their deed conflicts with the court's later grant of summary judgment to Smith because each ruling quiets title to the 2.65-feet-wide strip in a different party. We presume the trial court considered the Hubers' objection to the form of judgment Smith proposed and declined to include the language they requested to avoid making an inconsistent ruling. *See Flynn v. Cornoyer-Hedrick Architects & Planners, Inc.*, 160 Ariz. 187, 193, 772 P.2d 10, 16 (App. 1988)

("Where there is a conflict between a minute entry and the judgment, the terms of the judgment will control."); *Reid v. Reid*, 20 Ariz. App. 220, 221, 511 P.2d 664, 665 (1973) (court has discretion to change final judgment from minute entry); *see also Stevens*, 90 Ariz. at 45, 365 P.2d at 210 ("When the lower court has failed to make a determination that 'there is no just reason for delay' . . . it is deemed to have made its order subject to its own modification at any time before the final adjudication of all the claims . . . .") (citation omitted).

¶11 The Hubers also argue the trial court erred because the signed judgment does not contain a plain-language description of the property line. Although they provide no authority for their position, our supreme court has indicated that trial courts should avoid vague legal descriptions that would "require the services of a detective or an Indian scout rather than a surveyor to locate them." *Fritts v. Ericson*, 87 Ariz. 227, 232, 349 P.2d 1107, 1110 (1960); *see also Berryhill v. Moore*, 180 Ariz. 77, 87, 881 P.2d 1182, 1192 (App. 1994). We believe the legal description included in the trial court's judgment is sufficient. It includes the detailed legal description to Smith's property and the legal description to the additional 2.65-feet-wide strip bearing a surveyor's seal.

¶12 The Hubers also ask this court to order the trial court to amend the judgment "to reflect the outcome of the litigation in plain language." But the Hubers did not timely move to amend the judgment under Rule 59(*l*), Ariz. R. Civ. P., 16 A.R.S., Pt. 2, and cannot do so now on appeal. *See Tippit v. Lahr*, 132 Ariz. 406, 409, 646 P.2d 291, 294 (App.

1982) (husband's failure to move for modification of judgment precluded challenge to judgment ten years later).

¶13 The Hubers next argue the trial court erred when it awarded Smith his attorney fees and costs. Specifically, they contend Smith failed to comply with the statute that provides the exclusive basis for recovering fees and costs in a quiet title action. *See* A.R.S. § 12-1103(B). We will not disturb a discretionary award of attorney fees allowed by statute if there is any reasonable basis to uphold the award. *Rowland v. Great States Ins. Co.*, 199 Ariz. 577, ¶ 31, 20 P.3d 1158, 1168 (App. 2001).

¶14 Smith was granted attorney fees under A.R.S. § 12-341.01(C), which mandates an award of fees "in any contested action upon clear and convincing evidence that the claim or defense constitutes harassment, is groundless and is not made in good faith." On appeal, the Hubers do not address whether their claim was groundless or brought in bad faith to harass Smith. Rather, they argue that § 12-1103(B) is the exclusive basis for awarding attorney fees in a quiet title action and that Smith did not comply with its provisions. *See Lewis v. Pleasant Country, Ltd.*, 173 Ariz. 186, 195, 840 P.2d 1051, 1060 (App. 1992) (§ 12-1103(B) "exclusive basis" for award of attorney fees in quiet title action).

¶15 However, this court has characterized § 12-1103(B) as the exclusive basis for fees in quiet title actions only in the context of a claim for fees under § 12-341.01(A), which provides for awarding fees to the successful party in a contract action. *See Lange v. Lotzer*, 151 Ariz. 260, 261-62, 727 P.2d 38, 39-40 (App. 1986) (more specific statute governs over

more general; therefore, § 12-1103(B) trumps § 12-341.01(A) in quiet title actions). But, because § 12-341.01(C) provides a separate basis altogether for an award of attorney fees unrelated to the subject matter of the action, it does not conflict in any way with § 12-1103(B). For this reason, we find no abuse of discretion in its application here. *See generally London v. Green Acres Trust*, 159 Ariz. 136, 147, 765 P.2d 538, 549 (App. 1988) (even before codification of § 12-341.01(C), courts had equitable power to award attorney fees as sanction for bad faith).

¶16 However, § 12-341.01(C) does not also provide for awarding costs as a sanction for bringing a suit in bad faith, only attorney fees. Therefore, the trial court had no basis to award costs other than § 12-1103(B). And, because Smith did not comply with the requirements of that statute, the trial court erred in awarding Smith his costs.

¶17 Finally, Smith requests his attorney fees incurred on appeal without articulating a statutory, decisional or contractual basis for such an award. *See* Ariz. R. Civ. App. P. 21(c), 17B A.R.S. We decline his request. *See Twin Peaks Constr. Inc. of Nevada v. Weatherguard Metal Constr., Inc.*, 214 Ariz. 476, ¶ 14, 154 P.3d 378, 381 (App. 2007).

¶18 We affirm the judgment and award of attorney fees in favor of Smith but vacate the award of costs.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge